

1 review in the Supreme Court of California. According to the petition, both were denied as
2 untimely in 2000. The instant federal habeas petition was filed on August 31, 2007.

3 DISCUSSION

4 I Standard of Review

5 This court may entertain a petition for a writ of habeas corpus “in behalf of a person
6 in custody pursuant to the judgment of a State court only on the ground that he is in
7 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
8 § 2254(a).

9 It shall “award the writ or issue an order directing the respondent to show cause
10 why the writ should not be granted, unless it appears from the application that the applicant
11 or person detained is not entitled thereto.” *Id.* § 2243.

12 II Legal Claims

13 The petition raises the following grounds for relief: 1) ineffective assistance of
14 counsel at trial and sentencing; and 2) denial of the right to appeal. Liberally construed, it
15 does not appear from the face of the petition that Petitioner is not entitled to relief on his
16 claims. Accordingly, Respondent is ordered to respond to the petition as set forth below.

17 III. Motion for Counsel

18 Petitioner also filed a motion seeking appointment of counsel (docket no. 3).
19 Petitioner requests that counsel be appointed because he does not speak or read English.
20 However, the Sixth Amendment’s right to counsel does not apply in habeas corpus
21 actions. *Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986). 18 U.S.C. §
22 3006A(a)(2)(B) authorizes appointment of counsel to represent a habeas petitioner
23 whenever “the court determines that the interests of justice so require and such person is
24 financially unable to obtain representation.” The decision to appoint counsel is within the
25 discretion of the district court. *See Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986),
26 *cert. denied*, 481 U.S. 1023 (1987); *Knaubert*, 791 F.2d at 728.

27 Here, no evidentiary hearing appears necessary at this time. The Court concludes
28

1 that the interests of justice do not require appointment of counsel at this time, as
2 Petitioner has adequately presented the issues in the petition. Accordingly, Petitioner's
3 motion for appointment of counsel (docket no. 3) is DENIED without prejudice to the
4 Court's *sua sponte* reconsideration.

5 CONCLUSION

6 For the foregoing reasons and for good cause shown,

7 1. The Clerk shall serve by certified mail a copy of this order and the petition, and
8 all attachments thereto, on Respondent and Respondent's attorney, the Attorney General of
9 the State of California. The Clerk also shall serve a copy of this order on Petitioner.

10 2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)**
11 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the
12 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
13 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all
14 portions of the state trial record that have been transcribed previously and that are relevant
15 to a determination of the issues presented by the petition. If Petitioner wishes to respond
16 to the answer, he shall do so by filing a traverse with the Court and serving it on
17 Respondent within **thirty (30)** days of his receipt of the answer.

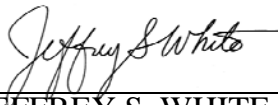
18 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
19 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
20 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court
21 and serve on Respondent an opposition or statement of non-opposition within **thirty (30)**
22 days of receipt of the motion, and Respondent shall file with the Court and serve on
23 Petitioner a reply within **fifteen (15)** days of receipt of any opposition.

24 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
25 the Court informed of any change of address by filing a separate paper captioned "Notice
26 of Change of Address." He must comply with the Court's orders in a timely fashion.
27 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
28

1 to Federal Rule of Civil Procedure 41(b)

2 IT IS SO ORDERED.

3 DATED: January 8, 2008

4 
JEFFREY S. WHITE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

FLORENCIO P VALLEJO,
Plaintiff,

Case Number: CV07-04536 JSW

CERTIFICATE OF SERVICE

v.

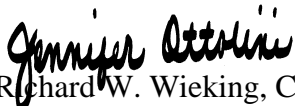
DERAL G ADAMS et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 8, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Florencio P. Vallejo
P-71999
SATF E2 #152-L
P.O. Box 5242
Corcoran, CA 93212

Dated: January 8, 2008


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk